

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-568 effective 90 days after July 29, 1958, or on any earlier date on which the Administrator of the National Aeronautics and Space Administration determines, and announces by proclamation, that the Administration has been organized and is prepared to discharge the duties and exercise the powers conferred upon it, see note set out under section 2302 of this title.

ACQUISITION, LEASE, OR RENTAL FOR USE BY THE ARMED FORCES OF MOTOR BUSES MANUFACTURED OUTSIDE THE UNITED STATES

Pub. L. 90-500, title IV, § 404, Sept. 20, 1968, 82 Stat. 851, which provided that no funds for the armed forces were to be used to buy or lease buses other than those manufactured in the United States, except as regulation from the Secretary of Defense might authorize solely to avoid uneconomical procurement or one contrary to the national interest, was repealed and restated as section 2400 of this title by Pub. L. 97-295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1294, 1314.

CROSS REFERENCES

Facilitation of procurement procedures, see section 252 of Title 41, Public Contracts.

Laws inapplicable to companies named in this section, see section 2314 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302a, 2302b, 2302c, 2304, 2307, 2309, 2311, 2314, 2318, 2320, 2374, 2384a, 2409, 2410 of this title.

[§ 2303a. Repealed. Pub. L. 98-577, title III, § 302(c)(1), Oct. 30, 1984, 98 Stat. 3077]

Section, Pub. L. 98-525, title XII, § 1212(a), Oct. 19, 1984, 98 Stat. 2590, related to publication of proposed regulations. See section 418b of Title 41, Public Contracts.

Section, pursuant to section 1212(b) of Pub. L. 98-525, was to have taken effect with respect to procurement policies, regulations, procedures, or forms first proposed to be issued by an agency on or after the date which was 30 days after the date of enactment of Pub. L. 98-525. Pub. L. 98-525 was approved Oct. 19, 1984. However, before that effective date, the section was repealed by Pub. L. 98-577.

§ 2304. Contracts: competition requirements

(a)(1) Except as provided in subsections (b), (c), and (g) and except in the case of procurement procedures otherwise expressly authorized by statute, the head of an agency in conducting a procurement for property or services—

(A) shall obtain full and open competition through the use of competitive procedures in accordance with the requirements of this chapter and the Federal Acquisition Regulation; and

(B) shall use the competitive procedure or combination of competitive procedures that is best suited under the circumstances of the procurement.

(2) In determining the competitive procedure appropriate under the circumstances, the head of an agency—

(A) shall solicit sealed bids if—

(i) time permits the solicitation, submission, and evaluation of sealed bids;

(ii) the award will be made on the basis of price and other price-related factors;

(iii) it is not necessary to conduct discussions with the responding sources about their bids; and

(iv) there is a reasonable expectation of receiving more than one sealed bid; and

(B) shall request competitive proposals if sealed bids are not appropriate under clause (A).

(b)(1) The head of an agency may provide for the procurement of property or services covered by this chapter using competitive procedures but excluding a particular source in order to establish or maintain an alternative source or sources of supply for that property or service if the head of the agency determines that to do so—

(A) would increase or maintain competition and would likely result in reduced overall costs for such procurement, or for any anticipated procurement, of property or services;

(B) would be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the property or service in case of a national emergency or industrial mobilization;

(C) would be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(D) would ensure the continuous availability of a reliable source of supply of such property or service;

(E) would satisfy projected needs for such property or service determined on the basis of a history of high demand for the property or service; or

(F) in the case of medical supplies, safety supplies, or emergency supplies, would satisfy a critical need for such supplies.

(2) The head of an agency may provide for the procurement of property or services covered by this section using competitive procedures, but excluding concerns other than small business concerns in furtherance of sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644) and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 2323 of this title.

(3) A contract awarded pursuant to the competitive procedures referred to in paragraphs (1) and (2) shall not be subject to the justification and approval required by subsection (f)(1).

(4) A determination under paragraph (1) may not be made for a class of purchases or contracts.

(c) The head of an agency may use procedures other than competitive procedures only when—

(1) the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency;

(2) the agency's need for the property or services is of such an unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals;

(3) it is necessary to award the contract to a particular source or sources in order (A) to

maintain a facility, producer, manufacturer, or other supplier available for furnishing property or services in case of a national emergency or to achieve industrial mobilization, (B) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center, or (C) to procure the services of an expert for use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government, in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify;

(4) the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the procurement of the property or services for such government, have the effect of requiring the use of procedures other than competitive procedures;

(5) subject to subsection (j), a statute expressly authorizes or requires that the procurement be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale;

(6) the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals; or

(7) the head of the agency—

(A) determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned, and

(B) notifies the Congress in writing of such determination not less than 30 days before the award of the contract.

(d)(1) For the purposes of applying subsection (c)(1)—

(A) in the case of a contract for property or services to be awarded on the basis of acceptance of an unsolicited research proposal, the property or services shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a concept—

(i) that is unique and innovative or, in the case of a service, for which the source demonstrates a unique capability of the source to provide the service; and

(ii) the substance of which is not otherwise available to the United States, and does not resemble the substance of a pending competitive procurement; and

(B) in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures when

it is likely that award to a source other than the original source would result in—

(i) substantial duplication of cost to the United States which is not expected to be recovered through competition; or

(ii) unacceptable delays in fulfilling the agency's needs.

(2) The authority of the head of an agency under subsection (c)(7) may not be delegated.

(e) The head of an agency using procedures other than competitive procedures to procure property or services by reason of the application of subsection (c)(2) or (c)(6) shall request offers from as many potential sources as is practicable under the circumstances.

(f)(1) Except as provided in paragraph (2), the head of an agency may not award a contract using procedures other than competitive procedures unless—

(A) the contracting officer for the contract justifies the use of such procedures in writing and certifies the accuracy and completeness of the justification;

(B) the justification is approved—

(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the competition advocate for the procuring activity (without further delegation) or by an official referred to in clause (ii), (iii), or (iv);

(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity (or the head of the procuring activity's delegate designated pursuant to paragraph (6)(A));

(iii) in the case of a contract for an amount exceeding \$10,000,000 (but equal to or less than \$50,000,000), by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) or the senior procurement executive's delegate designated pursuant to paragraph (6)(B), or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); or

(iv) in the case of a contract for an amount exceeding \$50,000,000, by the senior procurement executive of the agency designated pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) (without further delegation) or in the case of the Under Secretary of Defense for Acquisition and Technology, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(C); and

(C) any required notice has been published with respect to such contract pursuant to section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and all bids or proposals received in response to that notice have been considered by the head of the agency.

(2) In the case of a procurement permitted by subsection (c)(2), the justification and approval

required by paragraph (1) may be made after the contract is awarded. The justification and approval required by paragraph (1) is not required—

(A) when a statute expressly requires that the procurement be made from a specified source;

(B) when the agency's need is for a brand-name commercial item for authorized resale;

(C) in the case of a procurement permitted by subsection (c)(7);

(D) in the case of a procurement conducted under (i) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act, or (ii) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(E) in the case of a procurement permitted by subsection (c)(4), but only if the head of the contracting activity prepares a document in connection with such procurement that describes the terms of an agreement or treaty, or the written directions, referred to in that subsection that have the effect of requiring the use of procedures other than competitive procedures and such document is approved by the competition advocate for the procuring activity.

(3) The justification required by paragraph (1)(A) shall include—

(A) a description of the agency's needs;

(B) an identification of the statutory exception from the requirement to use competitive procedures and a demonstration, based on the proposed contractor's qualifications or the nature of the procurement, of the reasons for using that exception;

(C) a determination that the anticipated cost will be fair and reasonable;

(D) a description of the market survey conducted or a statement of the reasons a market survey was not conducted;

(E) a listing of the sources, if any, that expressed in writing an interest in the procurement; and

(F) a statement of the actions, if any, the agency may take to remove or overcome any barrier to competition before a subsequent procurement for such needs.

(4) The justification required by paragraph (1)(A) and any related information, and any document prepared pursuant to paragraph (2)(E), shall be made available for inspection by the public consistent with the provisions of section 552 of title 5.

(5) In no case may the head of an agency—

(A) enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions; or

(B) procure property or services from another agency unless such other agency complies fully with the requirements of this chapter in its procurement of such property or services.

The restriction contained in clause (B) is in addition to, and not in lieu of, any other restriction provided by law.

(6)(A) The authority of the head of a procuring activity under paragraph (1)(B)(ii) may be delegated only to an officer or employee who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of brigadier general or rear admiral (lower half).

(B) The authority of the senior procurement executive under paragraph (1)(B)(iii) may be delegated only to an officer or employee within the senior procurement executive's organization who—

(i) if a member of the armed forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position in grade GS-16 or above (or in a comparable or higher position under any other schedule for civilian officers or employees).

(C) The authority of the Under Secretary of Defense for Acquisition and Technology under paragraph (1)(B)(iv) may be delegated only to—

(i) an Assistant Secretary of Defense; or

(ii) with respect to the element of the Department of Defense (as specified in section 111(b) of this title), other than a military department, carrying out the procurement action concerned, an officer or employee serving in or assigned or detailed to that element who—

(I) if a member of the armed forces, is serving in a grade above brigadier general or rear admiral (lower half); or

(II) if a civilian, is serving in a position with a grade under the General Schedule (or any other schedule for civilian officers or employees) that is comparable to or higher than the grade of major general or rear admiral.

(g)(1) In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.

(2) A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified procedures required by paragraph (1).

(3) In using simplified procedures, the head of an agency shall promote competition to the maximum extent practicable.

(h) For the purposes of the following laws, purchases or contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed-bid procedures:

(1) The Act entitled "An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes", approved June 30, 1936 (commonly referred to as the "Walsh-Healey Act") (41 U.S.C. 35-45).

(2) The Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other pur-

poses", approved March 3, 1931 (commonly referred to as the "Davis-Bacon Act") (40 U.S.C. 276a—276a-5).

(i)(1) The Secretary of Defense shall prescribe by regulation the manner in which the Department of Defense negotiates prices for supplies to be obtained through the use of procedures other than competitive procedures, as defined in section 2302(2) of this title.

(2) The regulations required by paragraph (1) shall—

(A) specify the incurred overhead a contractor may appropriately allocate to supplies referred to in that paragraph; and

(B) require the contractor to identify those supplies which it did not manufacture or to which it did not contribute significant value.

(3) Such regulations shall not apply to an item of supply included in a contract or subcontract for which the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(j)(1) It is the policy of Congress that an agency named in section 2303(a) of this title should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures.

(2) A provision of law may not be construed as requiring a new contract to be awarded to a specified non-Federal Government entity unless that provision of law—

(A) specifically refers to this subsection;

(B) specifically identifies the particular non-Federal Government entity involved; and

(C) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in paragraph (1).

(3) For purposes of this subsection, a contract is a new contract unless the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract.

(4) This subsection shall not apply with respect to any contract that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an agency named in section 2303(a) of this title and to report on such matters to the Congress or any agency of the Federal Government.

(Aug. 10, 1956, ch. 1041, 70A Stat. 128; Aug. 28, 1958, Pub. L. 85-800, § 8, 72 Stat. 967; Sept. 2, 1958, Pub. L. 85-861, § 33(a)(12), 72 Stat. 1565; Sept. 10, 1962, Pub. L. 87-653, § 1(a)-(c), 76 Stat. 528; Mar. 16, 1968, Pub. L. 90-268, § 5, 82 Stat. 50; Sept. 20, 1968, Pub. L. 90-500, title IV, § 405, 82 Stat. 851; July 25, 1974, Pub. L. 93-356, § 4, 88 Stat. 390; Dec. 12, 1980, Pub. L. 96-513, title V, § 511(76), 94 Stat. 2926; Dec. 1, 1981, Pub. L. 97-86, title IX, § 907(a), 95 Stat. 1117; Oct. 12, 1982, Pub. L. 97-295, § 1(24), 96 Stat. 1290; Dec. 21, 1982, Pub. L. 97-375, title I, § 114, 96 Stat. 1821; July 18, 1984, Pub. L. 98-369, div. B, title VII, §§ 2723(a), 2727(b), 98 Stat. 1187, 1194; Oct. 30, 1984, Pub. L. 98-577, title V, § 504(b)(1), (2), 98 Stat. 3086; Nov. 8, 1985, Pub. L.

99-145, title IX, § 961(a)(1), title XIII, § 1303(a)(13), 99 Stat. 703, 739; Oct. 18, 1986, Pub. L. 99-500, § 101(c) [title X, §§ 923(a)-(c), 927(a)], 100 Stat. 1783-82, 1783-152, 1783-155, and Oct. 30, 1986, Pub. L. 99-591, § 101(c) [title X, §§ 923(a)-(c), 927(a)], 100 Stat. 3341-82, 3341-152, 3341-155; Nov. 14, 1986, Pub. L. 99-661, div. A, title IX, formerly title IV, §§ 923(a)-(c), 927(a), title XIII, § 1343(a)(14), 100 Stat. 3932, 3935, 3993, renumbered title IX, Apr. 21, 1987, Pub. L. 100-26, § 3(5), 101 Stat. 273; Apr. 21, 1987, Pub. L. 100-26, § 7(d)(3), 101 Stat. 281; Sept. 29, 1988, Pub. L. 100-456, div. A, title VIII, § 803, 102 Stat. 2008; Nov. 29, 1989, Pub. L. 101-189, div. A, title VIII, §§ 812, 817, 818, 853(d), 103 Stat. 1493, 1501, 1502, 1519; Nov. 5, 1990, Pub. L. 101-510, div. A, title VIII, § 806(b), 104 Stat. 1592; Apr. 6, 1991, Pub. L. 102-25, title VII, § 701(d)(2), 105 Stat. 114; Oct. 23, 1992, Pub. L. 102-484, div. A, title VIII, §§ 801(h)(2), 816, title X, § 1052(23), 106 Stat. 2445, 2454, 2500; Nov. 30, 1993, Pub. L. 103-160, div. A, title IX, § 904(d)(1), 107 Stat. 1728; Oct. 13, 1994, Pub. L. 103-355, title I, §§ 1001-1003, 1004(b), 1005, title IV, § 4401(a), title VII, § 7203(a)(1), 108 Stat. 3249, 3253, 3254, 3347, 3379.)

HISTORICAL AND REVISION NOTES 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2304(a)	41:151(c) (less proviso of clause (11) and proviso of clause (16)).	Feb. 19, 1948, ch. 65, § 2(b) (less 1st sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24.
2304(b)	41:156(d).	
2304(c)	41:151(e).	
2304(d)	41:151(b) (less 1st sentence).	
2304(e)	41:151(c) (proviso of clause (11) and proviso of clause (16)).	
2304(f)	41:157.	

In subsection (a)(1), the words "the period of" are omitted as surplusage.

In subsections (a)(4)-(10), and (12)-(15), the words "the purchase or contract is" are inserted for clarity.

In subsection (a)(5), the words "to be rendered" are omitted as surplusage.

In subsection (a)(6), the words "its Territories" are inserted for clarity. The words "the limits of" are omitted as surplusage.

In subsection (a)(14), the words "and for which" are substituted for the word "when".

In subsection (a)(15), the words "and for which" are substituted for 41:151(c)(15) (1st 22 words of proviso).

In subsection (a)(16), the words "to have" are substituted for the words "be made or kept".

In subsection (a)(17), the first 7 words are inserted for clarity.

In subsection (b), the words "shall be kept" are substituted for the words "shall be preserved in the files". The words "six years after the date" are substituted for the words "a period of six years following".

In subsection (c), the words "but such authorization shall be required in the same manner as heretofore" and "continental", in 41:151(e), are omitted as surplusage.

In subsection (d), the words "before making" are substituted for the words "Whenever it is proposed to make".

In subsection (e), the words "beginning six months after the effective date of this chapter" are omitted as executed. The words "on May 19 and November 19 of each year" are substituted for the words "and at the end of each six-month period thereafter", since the effective date of the source statute was May 19, 1948, and the first report was made on November 19, 1948. The words "property and services covered by each contract" are substituted for the words "work required to be performed thereunder".

1958 ACT

The change is necessary to reflect the present Commonwealth status of Puerto Rico.

1982 ACT

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2304(a) (1st sentence).	10:2304 (note).	Mar. 16, 1967, Pub. L. 90-5, § 304, 81 Stat. 6.
2304(f)(1)	10:2304(f)(1).	Sept. 21, 1977, Pub. L. 95-111, § 836, 91 Stat. 906.
2304(i)	10:2304 (note).	

In subsection (a), the words “The Secretary of Defense is hereby directed that insofar as practicable all contracts shall be formally advertised” are omitted as unnecessary because of 10:2304(a) (1st sentence).

Subsection (f)(1) is amended to correct a mistake in spelling.

In subsection (i)(1)(B), the words “or States” are omitted because of 1:1.

REFERENCES IN TEXT

The Wagner-O'Day Act, referred to in subsec. (f)(2)(D), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, now known as the Javits-Wagner-O'Day Act, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

The Walsh-Healey Act (41 U.S.C. 35-45), referred to in subsec. (h)(1), is act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 to 45 of Title 41. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

The Davis-Bacon Act (40 U.S.C. 276a-276a-5), referred to in subsec. (h)(2), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

1994—Subsec. (a)(1)(A). Pub. L. 103-355, § 1001(1), substituted “Federal Acquisition Regulation” for “modifications to regulations promulgated pursuant to section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)”.

Subsec. (b)(1)(D) to (F). Pub. L. 103-355, § 1002(a), added subpars. (D) to (F).

Subsec. (b)(4). Pub. L. 103-355, § 1002(b), added par. (4).

Subsec. (c)(3)(C). Pub. L. 103-355, § 1005, added subpar. (C).

Subsec. (c)(5). Pub. L. 103-355, § 7203(a)(1)(A), inserted “subject to subsection (j),” after “(5)”.

Subsec. (f)(1)(B)(i). Pub. L. 103-355, § 1003, inserted before semicolon at end “or by an official referred to in clause (ii), (iii), or (iv)”.

Subsec. (g)(1). Pub. L. 103-355, §§ 1001(2), 4401(a)(1), substituted “Federal Acquisition Regulation” for “regulations modified in accordance with section 2752 of the Competition in Contracting Act of 1984 (41 U.S.C. 403 note)” and “purchases of property and services for amounts not greater than the simplified acquisition threshold” for “small purchases of property and services”.

Subsec. (g)(2). Pub. L. 103-355, § 4401(a)(4), substituted “simplified acquisition threshold” for “small purchase threshold” and “simplified procedures” for “small purchase procedures”.

Pub. L. 103-355, § 4401(a)(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

“For the purposes of this subsection, a small purchase is a purchase or contract for an amount which does not exceed the small purchase threshold.”

Subsec. (g)(3). Pub. L. 103-355, § 4401(a)(5), substituted “simplified procedures” for “small purchase procedures”.

Pub. L. 103-355, § 4401(a)(3), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (g)(4). Pub. L. 103-355, § 4401(a)(3), redesignated par. (4) as (3).

Subsec. (j). Pub. L. 103-355, § 7203(a)(1)(B), added subsec. (j).

Pub. L. 103-355, § 1004(b), struck out subsec. (j) which related to authority of Secretary of Defense to enter into master agreements for advisory and assistance services.

1993—Subsec. (f)(1)(B)(iii), (iv), (6)(C). Pub. L. 103-160 substituted “Under Secretary of Defense for Acquisition and Technology” for “Under Secretary of Defense for Acquisition”.

1992—Subsec. (b)(2). Pub. L. 102-484, § 801(h)(2), substituted “section 2323 of this title” for “section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”.

Subsec. (j)(3)(A). Pub. L. 102-484, § 1052(23), substituted “section 8(d) of the Small Business Act (15 U.S.C. 637(d))” for “section 8(e) of the Small Business Act (15 U.S.C. 637(e))”.

Subsec. (j)(5). Pub. L. 102-484, § 816, substituted “on September 30, 1994.” for “at the end of the three-year period beginning on the date on which final regulations prescribed to carry out this subsection take effect.”

1991—Subsec. (g)(2). Pub. L. 102-25, § 701(d)(2)(A)(i), substituted “subsection” for “chapter”.

Subsec. (g)(5). Pub. L. 102-25, § 701(d)(2)(A)(ii), struck out par. (5) which provided that in this subsection, the term “small purchase threshold” has the meaning given such term in section 403(11) of title 41. See section 2302(7) of this title.

Subsec. (j)(3)(A). Pub. L. 102-25, § 701(d)(2)(B), substituted “the small purchase threshold” for “\$25,000”.

1990—Subsec. (g). Pub. L. 101-510 substituted “the small purchase threshold” for “\$25,000” in pars. (2) and (3) and added par. (5).

1989—Subsec. (b)(2). Pub. L. 101-189, § 853(d), substituted “The head of an agency” for “An executive agency” and “concerns other than” for “other than” and inserted before period at end “and concerns other than small business concerns, historically Black colleges and universities, and minority institutions in furtherance of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)”.

Subsec. (f)(1)(B)(iii). Pub. L. 101-189, § 818(a)(1), (3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (f)(1)(B)(iv). Pub. L. 101-189, § 818(a)(2), (c)(1), redesignated cl. (iii) as (iv) and substituted “\$50,000,000” for “\$10,000,000” and “paragraph (6)(C)” for “paragraph (6)(B)”.

Subsec. (f)(2)(E). Pub. L. 101-189, § 817(a), added subpar. (E).

Subsec. (f)(4). Pub. L. 101-189, § 817(b), inserted “, and any document prepared pursuant to paragraph (2)(E),” after “any related information”.

Subsec. (f)(6)(B). Pub. L. 101-189, § 818(b)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (f)(6)(C). Pub. L. 101-189, § 818(b)(1), (c)(2), redesignated subpar. (B) as (C) and substituted “paragraph (1)(B)(iv)” for “paragraph (1)(B)(iii)”.

Subsec. (j). Pub. L. 101-189, § 812, added subsec. (j).

1988—Subsec. (f)(1)(B)(ii). Pub. L. 100-456, § 803(1), substituted “(or the head of the procuring activity’s delegate designated pursuant to paragraph (6)(A));” for “or a delegate who, if a member of the armed forces, is a general or flag officer or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule);”.

Subsec. (f)(1)(B)(iii). Pub. L. 100-456, § 803(2), inserted “or in the case of the Under Secretary of Defense for

Acquisition, acting in his capacity as the senior procurement executive for the Department of Defense, the Under Secretary's delegate designated pursuant to paragraph (6)(B)" before semicolon at end.

Subsec. (f)(6). Pub. L. 100-456, § 803(3), added par. (6).

1987—Subsec. (a)(1)(A). Pub. L. 100-26, § 7(d)(3)(A), inserted "(41 U.S.C. 403 note)" after "Competition in Contracting Act of 1984".

Subsec. (f)(1)(C). Pub. L. 100-26, § 7(d)(3)(B), inserted "(41 U.S.C. 416)" after "Policy Act".

Subsec. (g)(1). Pub. L. 100-26, § 7(d)(3)(A), inserted "(41 U.S.C. 403 note)" after "Act of 1984".

1986—Subsec. (b)(2). Pub. L. 99-661, § 1343(a)(14), substituted "15 U.S.C. 638," for "15 U.S.C. 639;".

Subsec. (c)(1). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 923(a)], Pub. L. 99-661, § 923(a), amended par. (1) identically, inserting "or only from a limited number of responsible sources".

Subsec. (d)(1)(A). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 923(b)], Pub. L. 99-661, § 923(b), amended subpar. (A) identically, substituting "a concept—" for "a unique and innovative concept", adding cl. (i), and designating provision relating to nonavailability to the United States and nonresemblance to a pending competitive procurement as cl. (ii).

Subsec. (d)(1)(B). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 923(c)], Pub. L. 99-661, § 923(c), amended subpar. (B) identically, inserting " , or the continued provision of highly specialized services, such property or services may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures" after "highly specialized equipment", inserted a one-em dash after "would result in", paragraphed cls. (i) and (ii), in cl. (i) substituted "competition;" for "competition,", and in cl. (ii) struck out " , such property may be deemed to be available only from the original source and may be procured through procedures other than competitive procedures" after "agency's needs".

Subsec. (i). Pub. L. 99-500 and Pub. L. 99-591, § 101(c) [§ 927(a)], Pub. L. 99-661, § 927(a), amended section identically, adding subsec. (i).

1985—Subsec. (a)(1)(B). Pub. L. 99-145, § 1303(a)(13), substituted "procedures" for "krocedures".

Subsec. (f)(2). Pub. L. 99-145, § 961(a)(1), amended second sentence generally. Prior to amendment, second sentence read as follows: "The justification and approval required by paragraph (1) is not required in the case of a procurement permitted by subsection (c)(7) or in the case of a procurement conducted under—

"(A) the Act of June 25, 1938 (41 U.S.C. 46 et seq.), popularly referred to as the Wagner-O'Day Act; or

"(B) the authority of section 8(a) of the Small Business Act (15 U.S.C. 637)."

1984—Pub. L. 98-369, § 2723(a), substituted "Contracts: competition requirements" for "Purchases and contracts: formal advertising; exceptions" in section catchline and struck out subsecs. (a) to (e) and (g) to (i), redesignated subsec. (f) as (h), and added new subsecs. (a) through (g), thereby removing the prior statutory preference for formal advertising and installing instead more competitive procurement procedures, including dual sourcing, but with provision for the use of other than competitive procedures in specified situations.

Subsec. (b)(2). Pub. L. 98-577, § 504(b)(1), substituted provisions to the effect that executive agencies may provide for procurement of property or services covered by this section using competitive procedures but excluding other than small business concerns for provisions which provided that executive agencies shall use competitive procedures but may restrict a solicitation to allow only small business concerns to compete.

Subsec. (b)(3). Pub. L. 98-577, § 504(b)(1), added par. (3).

Subsec. (f)(2). Pub. L. 98-577, § 504(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h). Pub. L. 98-369, § 2727(b), substituted "contracts awarded after using procedures other than sealed-bid procedures shall be treated as if they were made with sealed bid procedures" for "contracts nego-

tiated under this section shall be treated as if they were made with formal advertising".

Pub. L. 98-369, § 2723(a)(1)(B), redesignated subsec. (f) as (h).

1982—Subsec. (a). Pub. L. 97-295, § 1(24)(A), inserted " , and shall be awarded on a competitive bid basis to the lowest responsible bidder," after "formal advertising".

Subsec. (e). Pub. L. 97-375 repealed subsec. (e) which directed that a report be made on May and November 19 of each year of purchases and contracts under cls. (11) and (16) of subsec. (a) since the last report, and that the report name each contractor, state the amount of each contract, and describe, with consideration of the national security, the property and services covered by each contract.

Subsec. (f)(1). Pub. L. 97-295, § 1(24)(B), substituted "Healey" for "Healy" after "Walsh-".

Subsec. (i). Pub. L. 97-295, § 1(24)(C), added subsec. (i).

1981—Subsecs. (a)(3), (g). Pub. L. 97-86 substituted "\$25,000" for "\$10,000".

1980—Subsec. (f). Pub. L. 96-513 substituted "(1) The Act entitled 'An Act to provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes', approved June 30, 1936 (commonly referred to as the 'Walsh-Healy Act') (41 U.S.C. 35-45).", for "(1) Sections 35-45 of title 41.", and "(2) The Act entitled 'An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes', approved March 3, 1931 (commonly referred to as the 'Davis-Bacon Act') (40 U.S.C. 276a-276a-5)." for "(2) Sections 276a-276a-5 of title 40.", and struck out "(3) Sections 324 and 325a of title 40".

1974—Subsec. (a)(3). Pub. L. 93-356, § 4(a), substituted "\$10,000" for "\$2,500".

Subsec. (g). Pub. L. 93-356, § 4(b), substituted "\$10,000" for "\$2,500".

1968—Subsec. (g). Pub. L. 90-500 required that the proposals solicited from the maximum number of qualified sources, consistent with the nature and requirements of the supplies or services to be procured, include price.

Subsec. (h). Pub. L. 90-268 added subsec. (h).

1962—Subsec. (a). Pub. L. 87-653, § 1(a), (b), provided that formal advertising be used where feasible and practicable under existing conditions and circumstances, subjected the agency head to the requirements of section 2310 of this title before negotiating a contract where formal advertising is not feasible and practicable and, in par. (14), substituted "would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property;" for "and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or".

Subsec. (g). Pub. L. 87-653, § 1(c), added subsec. (g).

1958—Subsec. (a). Pub. L. 85-861 included Commonwealths in cl. (6).

Pub. L. 85-800 substituted "\$2,500" for "\$1,000" in cl. (3) and inserted "or nonperishable" in cl. (9).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 101(c) [title X, § 923(d)] of Pub. L. 99-500 and Pub. L. 99-591, and section 923(d) of title IX, formerly title IV of Pub. L. 99-661, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273, provided that: "(1) The amendment made by subsection (a) [amending this section] shall apply with respect to contracts for which solicitations are issued after the end of the 180-day period beginning on the date of the enactment of this Act [Oct. 18, 1986]."

“(2) The amendment made by subsection (b) [amending this section] shall apply with respect to contracts awarded on the basis of unsolicited research proposals after the end of the 180-day period beginning on the date of the enactment of this Act.

“(3) The amendments made by subsection (c) [amending this section] shall apply with respect to follow-on contracts awarded after the end of the 180-day period beginning on the date of the enactment of this Act.”

EFFECTIVE DATE OF 1985 AMENDMENT

Section 961(e) of Pub. L. 99-145 provided that: “The amendments made by subsections (a) [amending this section and section 253 of Title 41, Public Contracts], (b) [amending section 2323 (now section 2343) of this title], and (c) [amending section 759 of Title 40, Public Buildings, Property, and Works] shall take effect as if included in the enactment of the Competition in Contracting Act of 1984 (title VII of division B of Public Law 98-369) [see Effective Date of 1985 Amendment note set out under section 251 of Title 41].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985, see section 2751 of Pub. L. 98-369, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 1(h) of Pub. L. 87-653 provided that: “The amendments made by this Act [amending this section and sections 2306, 2310, and 2311 of this title] shall take effect on the first day of the third calendar month which begins after the date of enactment of this Act [Sept. 10, 1962].”

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of this title.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Repeal of prior subsec. (j) of this section by section 1004(b) of Pub. L. 103-355 not to be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under section 759 of Title 40, Public Buildings, Property, and Works, or subchapter VI (§541 et seq.) of chapter 10 of Title 40, see section 1004(d) of Pub. L. 103-355, set out as a note under section 2304a of this title.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

AUTHORITY OF BASE COMMANDERS OVER CONTRACTING FOR COMMERCIAL ACTIVITIES

Pub. L. 100-180, div. A, title XI, §1111, Dec. 4, 1987, 101 Stat. 1146, provided that:

“(a) AUTHORITY.—The Secretary of Defense shall direct that the commander of each military installation (under regulations prescribed by the Secretary of Defense and subject to the authority, direction, and control of the Secretary) shall have the authority and the responsibility to carry out the following:

“(1) Prepare an inventory each fiscal year of commercial activities carried out by Government personnel on the military installation.

“(2) Decide which commercial activities shall be reviewed under the procedures and requirements of Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy).

“(3) Conduct a solicitation for contracts for those commercial activities selected for conversion to contractor performance under the Circular A-76 process.

“(4) To the maximum extent practicable, assist in finding suitable employment for any employee of the Department of Defense who is displaced because of a contract entered into with a contractor for performance of a commercial activity on the military installation.

“(b) DEADLINE FOR REGULATIONS.—The Secretary shall prescribe the regulations required by subsection (a) no later than 60 days after the date of the enactment of this Act [Dec. 4, 1987].

“(c) DEFINITION.—In this section, the term ‘military installation’ means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or Guam.

“(d) TERMINATION OF AUTHORITY.—The authority provided for commanders of military installations by subsection (a) shall terminate on October 1, 1989.”

CONSTRUCTION OF 1984 AMENDMENT

Section 2723(c) of Pub. L. 98-369 provided that: “The amendments made by this section [amending this section and section 2305 of this title] do not supersede or affect the provisions of section 8(a) of the Small Business Act (15 U.S.C. 637(a)).”

EVALUATION OF CONTRACTS FOR PROFESSIONAL AND TECHNICAL SERVICES

Section 804 of Pub. L. 100-456, as amended by Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, directed Secretary of Defense, within 120 days after Sept. 29, 1988, to establish criteria to ensure that proposals for contracts for professional and technical services be evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees and, within 30 days after Sept. 29, 1988, to establish an advisory committee to make recommendations on the criteria.

REGULATIONS ON USE OF FIXED-PRICE DEVELOPMENT CONTRACTS

Section 807 of Pub. L. 100-456, as amended by Pub. L. 103-160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, provided that:

“(a) IN GENERAL.—(1) Not later than 120 days after the date of the enactment of this Act [Sept. 29, 1988], the Secretary of Defense shall revise the Department of Defense regulations that provide for the use of fixed-price type contracts in a development program. The regulations shall provide that a fixed-price contract may be awarded in such a program only if—

“(A) the level of program risk permits realistic pricing; and

“(B) the use of a fixed-price contract permits an equitable and sensible allocation of program risk between the United States and the contractor.

“(2)(A) The regulations also shall provide that if a contract for development of a major system is to be awarded in an amount greater than \$10,000,000, the contract may not be a firm fixed-price contract.

“(B) A waiver of the requirement prescribed in regulations under subparagraph (A) may be granted by the Secretary of Defense, acting through the Under Secretary of Defense for Acquisition and Technology, but only if the Secretary determines and states in writing that the award is consistent with the criteria specified in clauses (A) and (B) of paragraph (1) and the regulations prescribed under such paragraph. The Secretary may delegate the authority in the preceding sentence only to a person who holds a position in the Office of

the Secretary of Defense at or above the level of Assistant Secretary of Defense.

“(b) DEFINITIONS.—In this section, the term ‘major system’ has the meaning given such term by section 2302(5) of such title.

“(c) EXPIRATION.—Paragraph (2) of subsection (a) shall cease to be effective two years after the date of the enactment of this Act [Sept. 29, 1988].”

PROHIBITION OF PURCHASE OF ANGOLAN PETROLEUM PRODUCTS FROM COMPANIES PRODUCING OIL IN ANGOLA

Section 842 of Pub. L. 102-484 provided that: “The prohibition in section 316 of the National Defense Authorization Act for Fiscal Year 1987 [Pub. L. 99-661] (100 Stat. 3855; 10 U.S.C. 2304 note) shall cease to be effective on the date on which the President certifies to Congress that free, fair, and democratic elections have taken place in Angola.”

Section 316 of Pub. L. 99-661 provided that:

“(a) GENERAL RULE.—The Secretary of Defense may not enter into a contract with a company for the purchase of petroleum products which originated in Angola if the company (or a subsidiary or partnership of the company) is engaged in the production of petroleum products in Angola.

“(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (a) if the Secretary determines that such action is in the best interest of the United States.

“(c) PETROLEUM PRODUCT DEFINED.—For purposes of this section, the term ‘petroleum product’ means—

- “(1) natural or synthetic crude;
- “(2) blends of natural or synthetic crude; and
- “(3) products refined or derived from natural or synthetic crude or from such blends.

“(d) EFFECTIVE DATE.—This section shall take effect six months after the date of the enactment of this Act [Nov. 14, 1986].”

DEADLINE FOR PRESCRIBING REGULATIONS

Section 101(c) [title X, §927(b)] of Pub. L. 99-500 and Pub. L. 99-591, and section 927(b) of title IX, formerly title IV, of Pub. L. 99-661, renumbered title IX, Pub. L. 100-26, §3(5), Apr. 21, 1987, 101 Stat. 273, provided that: “The Secretary of Defense shall prescribe the regulations required by section 2304(i) of such title (as added by subsection (a)) not later than 180 days after the date of the enactment of this Act [Oct. 18, 1986].”

ONE-YEAR SECURITY-GUARD PROHIBITION

Section 1222(b) of Pub. L. 99-661 provided that:

“(1) Except as provided in paragraph (2), funds appropriated to the Department of Defense may not be obligated or expended before October 1, 1987, for the purpose of entering into a contract for the performance of security-guard functions at any military installation or facility.

“(2) The prohibition in paragraph (1) does not apply—

“(A) to a contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which military personnel would have to be used for the performance of the function described in paragraph (1) at the expense of unit readiness;

“(B) to a contract to be carried out on a Government-owned but privately operated installation;

“(C) to a contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983; or

“(D) to a contract for the performance of security-guard functions if (i) the requirement for the functions arises after the date of the enactment of this Act [Nov. 14, 1986], and (ii) the Secretary of Defense determines the functions can be performed by contractor personnel without adversely affecting installation security, safety, or readiness.”

CONTRACTING OUT PERFORMANCE OF DEPARTMENT OF DEFENSE SUPPLY AND SERVICE FUNCTIONS

Section 1223 of Pub. L. 99-661, which required Secretary to contract for Department of Defense supplies

and services from private sector after a cost comparison demonstrates lower cost than Department of Defense can provide, and to ensure that overhead costs considered are realistic and fair, was repealed and restated in section 2462 of this title by Pub. L. 100-370, §2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

REPORTS ON SAVINGS OR COSTS FROM INCREASED USE OF CIVILIAN PERSONNEL

Section 1224 of Pub. L. 99-661, which required Secretary to maintain cost comparison data on performance of a commercial or industrial type activity taken over by Department of Defense comparing performance by employees of private contractor to that of civilian employees of Department of Defense, and to submit semi-annual report on savings or loss to United States, was repealed and restated in section 2463 of this title by Pub. L. 100-370, §2(a)(1), (c)(3), July 19, 1988, 102 Stat. 853, 854.

Determination of President of the United States, No. 93-32, July 19, 1993, 58 F.R. 40309, provided:

Pursuant to the authority vested in me by Public Law 102-484, section 842 [set out as a note above], I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the Federal Register.

WILLIAM J. CLINTON.

LIMITATIONS ON CONTRACTING PERFORMED BY COAST GUARD

Pub. L. 101-225, title II, §205, Dec. 12, 1989, 103 Stat. 1912, provided that: “Notwithstanding any other provision of law, an officer or employee of the United States may not enter into a contract for procurement of performance of any function being performed by Coast Guard personnel as of January 1, 1989, before—

“(1) a study has been performed by the Secretary of Transportation under the Office of Management and Budget Circular A-76 with respect to that procurement;

“(2) the Secretary of Transportation has performed a study, in addition to the study required by paragraph (1) of this subsection, to determine the impact of that procurement on the multimission capabilities of the Coast Guard; and

“(3) copies of the studies required by paragraphs (1) and (2) of this subsection are submitted to the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.”

Pub. L. 100-448, §5, Sept. 28, 1988, 102 Stat. 1837, as amended by Pub. L. 104-66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724, provided that:

“(a) MAINTENANCE OF LOGISTICS CAPABILITY.—

“(1) STATEMENT OF NATIONAL INTEREST.—It is in the national interest for the Coast Guard to maintain a logistics capability (including personnel, equipment, and facilities) to provide a ready and controlled source of technical competence and resources necessary to ensure the effective and timely performance of Coast Guard missions in behalf of the security, safety, and economic and environmental well-being of the United States.

“[(2) Repealed. Pub. L. 104-66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

“[(b) Repealed. Pub. L. 104-66, title I, §1121(b), Dec. 21, 1995, 109 Stat. 724.]

“(c) SUBMISISON [sic] OF LIST OF ACTIVITIES CONTRACTED FOR PERFORMANCE.—At least 30 days before the beginning of each fiscal year, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries [now Committee on Transportation and Infrastructure] of the House of Representatives a list of activities that will be contracted for performance by non-Government personnel

under the procedures of Office of Management and Budget Circular A-76 during that fiscal year.

“(d) EMPLOYMENT OF LOCAL RESIDENTS TO PERFORM CONTRACTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, each contract awarded by the Coast Guard in fiscal years 1988 and 1989 for construction or services to be performed in whole or in part in a State which has an unemployment rate in excess of the national average rate of unemployment (as determined by the Secretary of Labor) shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills. The Secretary of the department in which the Coast Guard is operating may waive this subsection in the interest of national security or economic efficiency.

“(2) LOCAL RESIDENT DEFINED.—As used in this subsection, the term ‘local resident’ means a resident of a State described in paragraph (1), and any individual who commutes daily to a State described in paragraph (1).”
Similar provisions were contained in the following prior authorization act:

Pub. L. 99-640, § 5, Nov. 10, 1986, 100 Stat. 3546.

CONTRACTED ADVISORY AND ASSISTANCE SERVICES

Section 918 of Pub. L. 99-145, which provided that Secretary of Defense require each military department to establish accounting procedure to aid in control of expenditures for contracted advisory and assistance services, prescribe regulations to identify such services and which services are in direct support of a weapons system, consider specific list of factors in prescribing regulations, and identify total amount requested and separate category amount requested in budget documents for Department of Defense presented to Congress, was repealed and restated in section 2212 of this title by Pub. L. 100-370, § 1(d)(2), July 19, 1988, 102 Stat. 842.

ASSIGNMENT OF PRINCIPAL CONTRACTING OFFICERS

Section 925 of Pub. L. 99-145 required Secretary of Defense to develop a policy regarding mobility and regular rotation of principal administrative and corporate administrative contracting officers in Department of Defense and to report to Committees on Armed Services of Senate and House of Representatives not later than January 1, 1986, on such policy, prior to repeal by Pub. L. 101-510, div. A, title XII, § 1207(a), Nov. 5, 1990, 104 Stat. 1665.

PROHIBITION ON FELONS CONVICTED OF DEFENSE-CONTRACT-RELATED FELONIES AND PENALTY ON EMPLOYMENT OF SUCH PERSONS BY DEFENSE CONTRACTORS

Pub. L. 99-145, title IX, § 932, Nov. 8, 1985, 99 Stat. 699, prohibited certain felons from working on defense contracts and penalized employment of such persons by defense contractors, prior to repeal by Pub. L. 99-500, § 101(c) [title X, § 941(b)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-162, and Pub. L. 99-591, § 101(c) [title X, § 941(b)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-162; Pub. L. 99-661, div. A, title IX, formerly title IV, § 941(b), Nov. 14, 1986, 100 Stat. 3942, renumbered title IX, Pub. L. 100-26, § 3(5), Apr. 21, 1987, 101 Stat. 273.

REIMBURSEMENT, INTEREST CHARGES, AND PENALTIES FOR OVERPAYMENTS DUE TO COST AND PRICING DATA

Pub. L. 99-145, title IX, § 934(a), Nov. 8, 1985, 99 Stat. 700, which provided for interest payments and penalties for overpayments due to faulty cost and pricing data, was repealed by Pub. L. 99-500, § 101(c) [title X, § 952(b)(2), (d)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-169, and Pub. L. 99-591, § 101(c) [title X, § 952(b)(2), (d)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-169; Pub. L. 99-661, div. A, title IX, formerly title IV, § 952(b)(2), (d), Nov. 14, 1986, 100 Stat. 3949, renumbered title IX, Pub. L. 100-26, § 3(5),

Apr. 21, 1987, 101 Stat. 273, effective with respect to contracts or modifications on contracts entered into after the end of the 120-day period beginning on Oct. 18, 1986.

PERSONNEL FOR PERFORMANCE OF SERVICES AND ACTIVITIES

Pub. L. 99-145, title XII, § 1233, Nov. 8, 1985, 99 Stat. 734, related to services and activities to be performed by non-Government personnel, prior to repeal by Pub. L. 99-661, div. A, title XII, § 1222(c), Nov. 14, 1986, 100 Stat. 3977.

LIMITATION ON CONTRACTING-OUT CORE LOGISTICS FUNCTIONS

Section 1231(a)-(e) of Pub. L. 99-145 declared that certain specifically described functions of the Department of Defense shall be deemed logistics activities necessary to maintain the logistics capability described in section 307(a)(1) of Pub. L. 98-525, formerly set out below; contained a description of the functions, i.e., depot-level maintenance of mission-essential materiel at specifically located activities of the Army, the Navy, the Marine Corps, the Air Force, the Defense Logistics Agency, and the Defense Mapping Agency; included certain matters within the specified functions and excluded certain functions; and defined “mission-essential materiel” as related to such functions.

Section 307 of Pub. L. 98-525, as amended by Pub. L. 99-145, title XII, § 1231(f), Nov. 8, 1985, 99 Stat. 733, which prohibited contracting to non-Government personnel of logistics activities necessary for effective response to national emergencies unless Secretary waives such prohibition after a determination that Government performance of such activity is no longer required for national defense reasons, and reports to Congress on waiver, was repealed and restated in section 2464 of this title by Pub. L. 100-370, § 2(a)(1), (c)(2), July 19, 1988, 102 Stat. 853, 854.

SHIPBUILDING CLAIMS FOR CONTRACT PRICE ADJUSTMENTS

Pub. L. 98-473, title I, § 101(h) [title VIII, § 8078], Oct. 12, 1984, 98 Stat. 1904, 1938, prohibited expenditure of funds to adjust any contract price in any shipbuilding claim, request for equitable adjustment, or demand for payment incurred due to the preparation, submission, or adjudication of any such shipbuilding claim, request, or demand under a contract entered into after Oct. 12, 1984, arising out of events occurring more than eighteen months prior to the submission of such shipbuilding claim, request, or demand, prior to repeal by Pub. L. 100-370, § 1(p)(2), July 19, 1988, 102 Stat. 851. See section 2405 of this title.

Pub. L. 98-212, title VII, § 787, Dec. 8, 1983, 97 Stat. 1453, which contained similar provisions relating to shipbuilding claims for contract price adjustments, was repealed and restated in section 2405 of this title by Pub. L. 98-525, title XII, § 1234(a), (b)(2), Oct. 19, 1984, 98 Stat. 2604, effective Oct. 19, 1984.

WEAPON SYSTEM GUARANTEES; GOVERNMENT-AS-SOURCE EXCEPTION; WAIVER

Pub. L. 98-212, title VII, § 794, Dec. 8, 1983, 97 Stat. 1454, provided for weapon system guarantees, Government-as-Source exception, and waiver, prior to repeal by Pub. L. 98-525, title XII, § 1234(b)(1), Oct. 19, 1984, 98 Stat. 2604, effective Jan. 1, 1985. See section 2403 of this title.

FIGHTER AIRCRAFT ENGINE WARRANTY

Pub. L. 97-377, title I, § 101(c) [title VII, § 797], Dec. 21, 1982, 96 Stat. 1865, provided that: “None of the funds made available in the Act or any subsequent Act shall be available for the purchase of the alternate or new model fighter aircraft engine that does not have a written warranty or guarantee attesting that it will perform not less than 3,000 tactical cycles. The warranty will provide that the manufacturer must perform the necessary improvements or replace any parts to

achieve the required performance at no cost to the Government.”

INSURANCE TO PROTECT GOVERNMENT CONTRACTORS AGAINST COST OF CORRECTING CONTRACTOR'S OWN DEFECTS; REIMBURSEMENT PROHIBITED

Pub. L. 97-12, title I, §100, June 5, 1981, 95 Stat. 29, and Pub. L. 97-114, title VII, §770, Dec. 29, 1981, 95 Stat. 1590, which provided that no funds authorized for the Department of Defense in fiscal year 1981 and thereafter would be available to reimburse a contractor for the cost of commercial insurance, except for that normally maintained in the conduct of his business, that would protect against the cost for correction for the contractor's own defects in materials or workmanship such as were not a fortuitous casualty or loss, were repealed and restated in section 2399 of this title by Pub. L. 97-295, §§1(29)(A), 6(b), Oct. 12, 1982, 96 Stat. 1293, 1315.

RESTRICTIONS ON CONVERSION OF PERFORMANCE OF COMMERCIAL AND INDUSTRIAL TYPE FUNCTIONS FROM DEPARTMENT OF DEFENSE PERSONNEL TO PRIVATE CONTRACTORS; ANNUAL REPORT TO CONGRESS

Pub. L. 96-342, title V, §502, Sept. 8, 1980, 94 Stat. 1086, as amended by Pub. L. 97-252, title XI, §1112(a), Sept. 8, 1982, 96 Stat. 747; Pub. L. 99-145, title XII, §1234(a), Nov. 8, 1985, 99 Stat. 734; Pub. L. 99-661, div. A, title XII, §1221, Nov. 14, 1986, 100 Stat. 3976, which provided that no commercial or industrial type function of the Department of Defense that on October 1, 1980, was being performed by Department of Defense civilian employees could be converted to performance by a private contractor to circumvent any civilian personnel ceiling unless Secretary of Defense submitted favorable cost comparisons and certifications, and reported annually to Congress with regard to such conversions, was repealed and restated in section 2461 of this title by Pub. L. 100-370, §2(a)(1), (c)(1), July 19, 1988, 102 Stat. 851, 854.

Similar provisions for fiscal year 1980 were contained in Pub. L. 96-107, title VIII, §806, Nov. 9, 1979, 93 Stat. 813.

CONTRACT CLAIMS; REQUEST FOR EQUITABLE ADJUSTMENT; REQUEST FOR RELIEF; CERTIFICATION

Pub. L. 95-485, title VIII, §813, Oct. 20, 1978, 92 Stat. 1624, which prohibited payment of a contract claim, request for equitable adjustment, or request for relief which exceeded \$100,000 unless a senior company official certified that request was made in good faith and that supporting data was accurate and complete, was repealed and restated in section 2410 of this title by Pub. L. 100-370, §1(h)(2), (p)(4), July 19, 1988, 102 Stat. 847, 851.

REPORT TO CONGRESS BY SECRETARY OF DEFENSE; CHANGES IN POLICY OR REGULATIONS CONCERNING USE OF PRIVATE CONTRACTORS FOR COMMERCIAL OR INDUSTRIAL TYPE FUNCTION AT DEPARTMENT OF DEFENSE INSTALLATIONS; RESTRICTIONS

Pub. L. 95-485, title VIII, §814, Oct. 20, 1978, 92 Stat. 1625, directed the Secretary of Defense to report to the House and Senate Committees on Armed Services any proposed change in policy or regulations from those in effect before June 30, 1976, as to whether commercial or industrial functions at Defense Department installations in the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors during the period Oct. 1, 1978 to Sept. 30, 1979; prohibited such functions to be performed privately unless such contractor performance began before Oct. 20, 1978 or performance would have been allowed by policy and regulations in effect before June 30, 1976; and provided that such prohibition would apply until the end of the 60 day period begin-

ning on the date the report by the Secretary of Defense is received by the House and Senate Committees.

REPORTING REQUIREMENTS FOR SECRETARY OF DEFENSE AND PRIME CONTRACTORS CONCERNING PAYMENTS BY PRIME CONTRACTORS FOR WORK PERFORMED BY SUB-CONTRACTORS

Pub. L. 95-111, title VIII, §836, Sept. 21, 1977, 91 Stat. 906, which directed the Secretary of Defense to require all prime contractors with more than \$500,000 of defense contract awards to report in dollars at the end of each year the amount of work done in that year and the State where performed, and requiring the Secretary of Defense to report annually to Congress the amount of funds spent for such work in each State, was repealed and restated in subsec. (i) of this section by Pub. L. 97-295, §§1(24)(C), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1315.

PERFORMANCE REVIEW OF DEPARTMENT OF DEFENSE COMMERCIAL OR INDUSTRIAL FUNCTIONS

Pub. L. 95-79, title VIII, §809, July 30, 1977, 91 Stat. 334, directed the Secretary of Defense and the Director of the Office of Management and Budget to review criteria used in determining whether commercial or industrial type functions at Department of Defense installations within the United States, Puerto Rico, and Guam should be performed by Department of Defense personnel or by private contractors and to report to the House and Senate Armed Services Committees before Jan. 1, 1978, the results of the review; prohibited commercial or industrial type functions being performed on July 30, 1977 by Department of Defense personnel from being converted to performance by private contractors before the earlier of Mar. 15, 1978 or the end of the 90-day period beginning on the date the report is received by the House and Senate Committees; exempted from such prohibition the conversion to performance by private contractors of industrial or commercial type functions if the conversion would have been made under policies and regulations in effect before June 30, 1976; and required the Secretary of Defense to report to the House and Senate Committees on Armed Services before Jan. 1, 1978, detailing the Department's rationale for establishing goals for the percentage of work at defense research installations to be performed by private contractors and for any direction in effect on July 30, 1977 establishing a minimum or maximum percentage for the allocation of work at any defense research installation to be performed by private contractors or directing a change in any such allocation in effect on July 30, 1977.

DISCRIMINATION IN PETROLEUM SUPPLIES TO ARMED FORCES PROHIBITED; ENFORCEMENT PROCEDURE; PENALTIES; EXPIRATION

Pub. L. 94-106, title VIII, §816, Oct. 7, 1975, 89 Stat. 540, as amended by Pub. L. 98-620, title IV, §402(8), Nov. 8, 1984, 98 Stat. 3357, provided a remedy for discrimination by citizens of nationals of the United States or corporations organized or operating within the United States, and by organizations controlled by them, against the Department of Defense in the supply of petroleum products for two years after Oct. 7, 1975.

ANNOUNCEMENTS OF AWARD OF CONTRACTS BY DEPARTMENT OF DEFENSE; DISCLOSURE OF IDENTITY OF CONTRACTOR PRIOR TO ANNOUNCEMENT PROHIBITED

Pub. L. 91-441, title V, §507, Oct. 7, 1970, 84 Stat. 913, which had provided that the identity or location of a recipient of a contract from the Department of Defense may not be revealed prior to the public announcement of such identity by the Secretary of Defense, was repealed and restated in section 2316 of this title by Pub. L. 97-295, §§1(26)(A), 6(b), Oct. 12, 1982, 96 Stat. 1291, 1314.

AWARD OF CONTRACTS THROUGH FORMAL ADVERTISING AND COMPETITIVE BIDDING WHERE PRACTICABLE

Pub. L. 90-5, title III, §304, Mar. 16, 1967, 81 Stat. 6, which had provided that the Secretary of Defense was

directed, insofar as practicable, that all contracts be formally advertised and awarded on a competitive bid basis to the lowest responsible bidder, was repealed and restated in subsec. (a) of this section by Pub. L. 97-295, §§1(24)(A), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1314.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

Provisions of the National Emergencies Act not applicable to the powers and authorities conferred by subsec. (a)(1) of this section and actions taken hereunder, see section 1651(a)(7) of Title 50, War and National Defense.

CROSS REFERENCES

Delegation of powers, see section 2311 of this title.

Determinations or decisions based on written findings, see section 2310 of this title.

National defense contract provisions as not authorizing increase in price of subsec. (a)(15) contracts to amount higher than lowest rejected bid of responsible bidder, see section 1432 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1091, 1724, 2304a, 2304b, 2304c, 2343, 2350b, 2361, 2662 of this title; title 15 section 637; title 41 sections 416, 417, 423; title 42 section 2465e; title 50 sections 403c, 1432, 1651; title 50 App. section 2077.

§ 2304a.¹ Task and delivery order contracts: general authority

(a) **AUTHORITY TO AWARD.**—Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of an agency may enter into a task or delivery order contract (as defined in section 2304d of this title) for procurement of services or property.

(b) **SOLICITATION.**—The solicitation for a task or delivery order contract shall include the following:

(1) The period of the contract, including the number of options to extend the contract and the period for which the contract may be extended under each option, if any.

(2) The maximum quantity or dollar value of the services or property to be procured under the contract.

(3) A statement of work, specifications, or other description that reasonably describes the general scope, nature, complexity, and purposes of the services or property to be procured under the contract.

(c) **APPLICABILITY OF RESTRICTION ON USE OF NONCOMPETITIVE PROCEDURES.**—The head of an agency may use procedures other than competitive procedures to enter into a task or delivery order contract under this section only if an exception in subsection (c) of section 2304 of this title applies to the contract and the use of such procedures is approved in accordance with subsection (f) of such section.

(d) **SINGLE AND MULTIPLE CONTRACT AWARDS.**—(1) The head of an agency may exercise the authority provided in this section—

(A) to award a single task or delivery order contract; or

(B) if the solicitation states that the head of the agency has the option to do so, to award separate task or delivery order contracts for

the same or similar services or property to two or more sources.

(2) No determination under section 2304(b) of this title is required for award of multiple task or delivery order contracts under paragraph (1)(B).

(3) The regulations implementing this subsection shall—

(A) establish a preference for awarding, to the maximum extent practicable, multiple task or delivery order contracts for the same or similar services or property under the authority of paragraph (1)(B); and

(B) establish criteria for determining when award of multiple task or delivery order contracts would not be in the best interest of the Federal Government.

(e) **CONTRACT MODIFICATIONS.**—A task or delivery order may not increase the scope, period, or maximum value of the task or delivery order contract under which the order is issued. The scope, period, or maximum value of the contract may be increased only by modification of the contract.

(f) **INAPPLICABILITY TO CONTRACTS FOR ADVISORY AND ASSISTANCE SERVICES.**—Except as otherwise specifically provided in section 2304b of this title, this section does not apply to a task or delivery order contract for the procurement of advisory and assistance services (as defined in section 1105(g) of title 31).

(g) **RELATIONSHIP TO OTHER CONTRACTING AUTHORITY.**—Nothing in this section may be construed to limit or expand any authority of the head of an agency or the Administrator of General Services to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law.

(Added Pub. L. 103-355, title I, §1004(a)(1), Oct. 13, 1994, 108 Stat. 3249.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

PROVISIONS NOT AFFECTED BY PUB. L. 103-355

Section 1004(d) of Pub. L. 103-355 provided that: “Nothing in section 2304a, 2304b, 2304c, or 2304d of title 10, United States Code, as added by subsection (a), and nothing in the amendments made by subsections (b) and (c) [amending sections 2304 and 2331 of this title], shall be construed as modifying or superseding, or as intended to impair or restrict, authorities or responsibilities under—

“(1) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759)); and

“(2) the Brooks Architect-Engineers Act (title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.)).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2304b, 2304c, 2304d of this title.

§ 2304b. Task order contracts: advisory and assistance services

(a) **AUTHORITY TO AWARD.**—(1) Subject to the requirements of this section, section 2304c of this title, and other applicable law, the head of

¹Another section 2304a is set out after section 2304d of this title.